



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Southwest Mobile Systems Corporation  
**File:** B-223940  
**Date:** August 21, 1986

---

### DIGEST

1. The fact that bidder did not submit a subcontracting plan concurrently with its bid at bid opening did not render bid nonresponsive because the requirement relates to the bidder's responsibility and therefore can be furnished any time before award of the contract.
2. There is no legal basis to object to a below-cost bid. Whether a bidder can meet contract requirements in light of its low price is a matter of responsibility, the affirmative determination of which is not reviewed by GAO except in circumstances not present in this case.

---

### DECISION

On August 7, 1986, Southwest Mobile Systems Corporation (Southwest) protested the award to Urdan Industries Limited, the low bidder, under invitation for bids (IFB) No. DAAE07-86-B-J001, issued by the United States Army Tank-Automotive Command (TACOM), for mobile rigid platform semitrailers. A protest dated May 9, 1986, to the agency on the same grounds was denied by the agency on August 4, 1986. Southwest contends that Urdan was nonresponsive to the IFB because it did not submit a subcontracting plan concurrently with its bid at bid opening. Southwest also alleges that since Urdan's bid price was too low to meet the requirements of the IFB, it is apparently "buying-in" in violation of the procurement laws.

We dismiss the protest without obtaining an agency report since it is clear on the face of the protest that it is without merit. 4 C.F.R. § 21.3(f) (1986).

We have held that the requirement for a small business and small disadvantaged business subcontracting plan relates to

036411

the bidder's responsibility, even where the solicitation requests the bidder to submit its plan with the bid. Devcon Systems Corp., 59 Comp. Gen. 614 (1980), 80-2 C.P.D. ¶ 46.

"Responsibility" as used in federal procurement refers to a bidder's ability to perform all of the contract requirements prescribed by the solicitation, while "responsiveness" concerns whether a bidder unequivocally offered to comply with the material terms and specifications of the solicitation. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 C.P.D. ¶ 322. The determination of responsiveness must be made from the bid documents as of the time of bid opening, while requirements bearing on the responsibility of a bidder may be met after bid opening. Devcon Systems Corp., 59 Comp. Gen., supra.

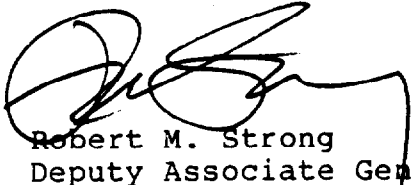
Here, although the plans were requested to be submitted with the bid, there was no requirement in the solicitation or the Small Business Act, 15 U.S.C. § 631 et seq. (1982), that required bidders to be locked into their plan at the time of bid submission. Devcon Systems Corp., 59 Comp. Gen., supra, at 618. Indeed, the Small Business Act only requires the bidder selected for award to provide an acceptable plan. 15 U.S.C. § 637 (d)(4)(b) (1982). Moreover, the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.702(a)(2) (1985), which implements the Small Business Act, requires the selected bidder to submit a plan within the time limit prescribed by the contracting officer or be "ineligible for award." A matter relating to responsibility cannot be treated as one of responsiveness merely because of a statement to that effect in the solicitation. Devcon Systems Corp., 59 Comp. Gen. supra at 618. Therefore, we find that the fact that Urdan did not submit a subcontracting plan with its bid did not render the bid nonresponsive, since it could and did submit a plan acceptable to TACOM prior to award.

Moreover, the submission of a below cost bid is not illegal and provides no basis for challenging an award of a firm, fixed-price contract to a responsible contractor, since such a contract is not subject to adjustment based on the contractor's cost experience during performance and places no obligation on the contracting agency to pay more than the price at which contract award is made. See LSL Industries, Inc., B-222588, July 22, 1986, 86-2 C.P.D. ¶ \_\_\_\_\_. Whether the low bidder has the capability to perform at the bid price is a matter of bidder responsibility. The contracting officer makes a determination of the prospective awardee's responsibility before award. Our Office does not review protests against affirmative determinations of responsibility, unless either fraud or bad faith on the part of procuring officials

is shown or the solicitation contains definitive responsibility criteria which allegedly have been mis-applied. Id. Neither exception applies here.

On August 15, 1986, Southwest submitted several additional grounds of protest, those being (1) Southwest's labor surplus area status was not sufficiently accounted for; (2) Urdan's transportation costs will be so expensive that its bid must be a "buy-in"; and (3) it is not in the government's best interests to make an award of this national security item to a firm which will manufacture it in Israel, an unstable region of the world. This supplemental protest is untimely filed under our Bid Protest Regulations since it was not the subject of Southwest's earlier protest to the agency and was not filed within 10 days after these bases of protest were known or should have been known. 4 C.F.R. § 21.2(a)(2) (1985).

The protest is therefore dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name of Robert M. Strong.

Robert M. Strong  
Deputy Associate General Counsel